

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON MIGUEL ESCAMILLA,

Plaintiff,

v.

A. OBOYLE, et al.,

Defendants.

No. 2:22-cv-2038 KJM AC P

ORDER

Plaintiff has filed another request for the appointment of counsel. ECF No. 30. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

“When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish

1 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

2 Plaintiff seeks appointment of counsel on the grounds that his mental health has worsened,  
3 resulting in an increase in his level of care; his housing assignment in administrative segregation  
4 prevents him from obtaining favorable evidence and investigating his claims; and the inmate who  
5 has been assisting him is going to be transferred. ECF No. 30 at 1-5. However, these  
6 circumstances are common to many prisoners and therefore do not demonstrate the existence of  
7 extraordinary circumstances warranting the appointment of counsel.

8 In denying plaintiff's previous motion for counsel, the court advised that if he was seeking  
9 appointment of counsel based upon his mental health conditions, he must provide medical  
10 documents supporting his claimed impairments. ECF No. 21 at 2. While plaintiff has provided  
11 medical records confirming his mental health diagnosis and that he suffers some difficulties as a  
12 result (ECF No. 30 at 7-14), these records do not establish that he is so impaired that he is unable  
13 to pursue this case without assistance. Many inmates with mental illness are able to adequately  
14 articulate their claims without assistance, and he has thus far plaintiff has demonstrated that he is  
15 capable of doing so. Although plaintiff asserts that he has been obtaining assistance from another  
16 inmate who is being transferred, it has yet to be established that he will be unable to find  
17 assistance elsewhere in the event the individual assisting him is in fact transferred. Finally, this  
18 case was recently referred to the Post-Screening ADR Project and is currently stayed. ECF No.  
19 27. As a result, plaintiff has no pending deadlines. For all these reasons, plaintiff has not shown  
20 the existence of extraordinary circumstances warranting the appointment of counsel.

21 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the appointment of  
22 counsel (ECF No. 30) is DENIED.

23 DATED: March 15, 2023

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE

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